> The man who carries a gun has the capacity to use it for it is all too easy to translate from mere possession into actual use with disastrous results.

In *Lee Chow Meng* v *PP* [5] Abdul Hamid J, as he then was, said:

> I would say that it is common knowledge that, of late, commission of offences involving firearms has been prevalent in Kuala Lumpur and I think the court is entitled to take judicial notice of that fact.

In my opinion, when considering what should be the proper sentences in cases of possession of firearms and ammunition, the court has to bear in mind that public interest should be protected. The only way to protect the public interest is to impose deterrent sentences. In *Teh Ah Cheng*[3] Abdoolcader J took into account the element of public interest in considering sentence. He also took into account the preventive principle. In *Chung Kwong Huah*,[4] Chan J also took into consideration the deterrent principle. The learned judge also applied the retribution principle. Similarly in *Lee Chow Meng*,[5] Abdul Hamid J also took public interest into account.

The learned president in his grounds of judgment took into account the public interest and applied the deterrent principle. In my view, he has applied the right principle. The question is whether the sentences passed by him were manifestly inadequate and inappropriate as alleged by the learned deputy.

In *Teh Ah Cheng*[3] the respondent pleaded guilty to two charges of unlawful possession of an automatic pistol and six rounds of ammunition under the Arms Act 1960. Abdoolcader J sentenced him to three years' imprisonment in respect of each charge. In *Chung Kwong Huah*[4] Chan J sentenced the accused to ten years' imprisonment and six strokes for possession of a Smith & Wesson .32 revolver under the Firearms (Increased Penalties) Act 1971. For possession of six rounds of ammunition, he sentenced the accused to three years' imprisonment. In *Lee Chow Meng*,[5] Abdul Hamid J confirmed the sentence of ten years' imprisonment and six strokes passed by the Sessions Court for unlawful possession of an automatic pistol punishable under s 8 of the Firearms (Increased Penalties) Act; and a sentence of seven years' imprisonment for unlawful possession of 30 rounds of ammunition punishable under s 9(a) of the Arms Act 1960. It should be noted that in *Lee Chow Meng's* case[5] robbery was committed and the firearm was used in the course of the robbery. In the circumstances, the sentences of ten years' imprisonment and six strokes and seven years' imprisonment were justified.

In the present case, the offences committed were mere possession of the firearm and ammunition. There is no evidence that he used the gun to commit an offence. He pleaded guilty to both charges in the Sessions Court. Considering all the facts and circumstances in this case, I think the sentences passed by the learned president should not be disturbed.

One last point to consider: Whether the sentences should run concurrently or consecutively. In both *Teh Ah Cheng*[3] and *Chung Kwong Huah*,[4] sentences were ordered to run concurrently. In *Lee Chow Meng*,[5] Abdul Hamid J ordered the sentences to run consecutively but as already pointed out, in that case, the gun was used to commit robbery.

In my opinion, the president was not wrong in law when he ordered the sentences to run concurrently. For the reasons stated above, I dismiss the appeal and confirm the sentences passed by the learned president.

Appeal dismissed.

Solicitors: *Mian Lee & Partners.*

Reported by *Ng Sheau Jiuan*

Yong Yin Siew v Chong Sheak Thow

HIGH COURT (ALOR SETAR) – CIVIL SUIT NO 298 OF 1975
MUSTAPHA HUSSAIN J
1 DECEMBER 1987

Chinese Law and Custom – Surname or 'seh' – Change of – Re-marriage of widow

Evidence – Expert – Evidence Act 1950, ss 48-51

Civil Procedure – Conduct of proceedings – Observations on

The plaintiff and the defendant each claimed to be the descendant and beneficiary of the deceased, the original owner of a piece of land in Kuala Perlis. On the evidence adduced, the court found that the defendant was in no way related to the deceased, and gave judgment for the plaintiff.

In the course of the trial, an expert on matters of Chinese customs and traditions was called to give evidence on the import of a Chinese surname or 'seh'. The court accepted evidence that under Chinese customs and traditions, the surname or 'seh' is the perpetuation of a Chinese family, the sons and daughters taking on the surname and the children of the sons will continue to have the surname, especially along the male line. If a Chinese changes his surname, he will be treated as an outcast; he passes out of the family line and he loses all rights of inheritance and succession. If a widow who has sons by her deceased husband re-marries, she should leave the sons with the family of the deceased husband. If she takes the sons along to her new husband's house, the surname of her son cannot be changed to that of the stepfather's.

[*Editorial Note*: The defendant has appealed to the Supreme Court vide Supreme Court Civil Appeal No 550 of 1987.]

Legislation referred to
Evidence Act 1950 ss 48-51

E Mayandi for the plaintiff.
Tan Beng Hong for the defendant.

Cur Adv Vult

Mustapha Hussain J: This is a case of two parties each claiming to be the descendant and beneficiary of the original owner of a piece of land of about 15 relongs in Perlis known as lot 201, rm 34, mukim of Kuala Perlis. The original owner was named Yong On s/o Yong Koi who died sometime in the year 1933 at the age of 26 years. The name of the plaintiff herein is Yong Yin Siew while the name of the defendant is Chong Sheak Thow. According to the Chinese people, the surname or 'seh' of the children must follow their father's surname or 'seh'. But there are exceptions where a child for some reason or other is given away to another person and that child may have dual surnames. During the trial of this suit an expert in matters of Chinese customs and traditions, Tan Sri Lee Siow Mong, was called to give evidence on the import of a Chinese surname or 'seh'.

This case has a long history, starting with the enquiry in the land office in Kangar, Perlis, way back in 1973. Both parties were ably represented by counsel at that land office enquiry. The notes of the enquiry held at the land office are in the agreed bundle of documents and the officers who conducted the said enquiry also came to court to give evidence during the trial.

According to the statement of claim of the plaintiff, the original owner of the said land Yong On s/o Yong Koi died some time in 1933 at the age of 26 years leaving no issue except an uncle of his named Yong Hwa. This Yong Hwa became the beneficiary of the estate of Yong On s/o Yong Koi and took possession of the said land. Yong Hwa then rented the land to Weng Mah Thye and Chong Peck Koi.

This Yong Hwa is the father of Yong Peck Koi (not to be confused with Chong Peck Koi – the surnames are different) and this Yong Peck Koi is the father of the plaintiff, Yong Yin Siew. And upon the death of Yong Hwa, the plaintiff's father Yong Peck Koi became the sole beneficiary and took possession of the said land. Yong Peck Koi rented the land out to Chong Peck Koi's son named Chong Kee Yue.

Sometime in 1971 the plaintiff's father Yong Peck Koi died and when the plaintiff approached Chong Kee Yue, he was informed that rental for three years had already been paid to the plaintiff's father in advance.

In April 1973, the plaintiff went to the land office in Kangar to apply for a distribution order in respect of the estate of the late Yong On s/o Yong Koi, and to his dismay, he was informed that the land in question had already been registered in the names of the defendant and defendant's brother as they had earlier on applied and claimed themselves to be the sons of Yong On, the deceased original owner of the said land.

The plaintiff then appealed against that order registering the defendant and his brother as owners of the said land. This appeal was heard before the Pegawai Penyelesaian Tanah Kangar (PPT in short) in the presence of the plaintiff and defendant, each represented by counsel. After the hearing, the PPT revoked his earlier order and ordered that the land be vested in the name of the plaintiff (the then beneficiaries entitled together with the plaintiff having consented to the land being in plaintiff's sole name). In his grounds of decision, the PPT found that the defendant and his brother were not the beneficiaries of Yong On, the deceased.

The defendant then lodged an appeal against the above order of the PPT at the Alor Setar High Court vide Alor Setar High Court Civil Appeal No 16 of 1974. At the hearing of this civil appeal the learned judge adjourned the appeal sine die and ordered the defendant to file a civil suit in the High Court and at the same time stayed the order of the PPT. This order by the High Court was made on 15 December 1974. Since the defendant was all the time in occupation of the said land, he chose not to do anything at all about this order of the High Court, thus forcing the plaintiff to initiate action and file this present suit.

In his statement of defence, the defendant averred that Yong On died leaving a son named Chong Peck Koi. And in para 9 of the statement of defence, the defendant states that *'the whole subject matter shall be decided in a pending civil action'*. It is interesting to note that although the High Court had ordered him to file a civil action, he had chosen to just keep quiet about it but now in his defence, he says the whole subject matter shall be decided in a civil action. The defendant of course and for good reasons had not filed any civil action and should be thankful to the plaintiff for doing so instead of complaining.

At the trial, which was full of adjournments and re-calling of witnesses for further and additional cross-examination, for obvious reasons, the plaintiff called Tan Sri Lee Siow Mong (PW1), an expert in matters of Chinese customs and traditions. This was strongly objected to by counsel for the defendant who gave no ground at all for so objecting. Counsel for the plaintiff cited ss 48, 49, 50 and 51 of the Evidence Act 1950 to support calling this expert to give evidence. One of the important issues in this case is the import of the surname or 'seh'. We have here a party with the surname of 'Chong' claiming to be the descendant of a person with the surname of 'Yong'. It was therefore important for the court to hear the evidence of an expert on Chinese matters as to the expert opinion of the surname or 'seh'. It is quite understandable why the defendant had strenuously objected to this expert giving evidence.

PW1, after giving a summary of his special knowledge of the Chinese customs and traditions, stated that to the Chinese people, the surname or 'seh' was the

hallmark of every Chinese family. It is unchangeable though there is nothing for a Chinese from going against the custom and changing his surname. The surname is the perpetuation of a Chinese family, the sons and daughters taking on the surname and the children of the sons will continue to have the surname, especially along the male line. If a Chinese changes his surname, he will be treated as an outcast, he passes out of the family line and he loses all the rights of inheritance and succession.

On being asked if a widow who has sons by her deceased husband re-marries, this expert witness said she should leave the sons with the family of the deceased husband. But if she takes the sons along to the new husband's house, the surname of the sons cannot be changed to that of the stepfather's name.

In cross-examination by the defendant's counsel this witness said even if there is a mistake made by the Registration Department in issuing the identity cards, mistake in spelling due to sounds, a 'Yong' cannot pass as a 'Chong' at any time, as there is a vast difference in the sound and tone to be confused.

At the continued hearing of the suit at the next sitting of the court, the defendant's counsel informed the court that the defendant had filed a notice of motion to set aside the order of court dated 15 December 1974 and said this motion has to be disposed of before continuing with the present case. The court rejected the contention and dismissed the notice of motion.

Why the defendant filed this notice of motion to set aside the order dated 15 December 1974 is beyond belief. That order of the High Court was an order by consent and that order too was to direct the defendant to file a civil action in the High Court to settle once and for all the dispute between the parties – and to this end the plaintiff had taken the initiative to file this suit instead of the defendant according to the said order, as the defendant who was already in occupation of the land had not done anything about it. It is precisely to conform to that High Court order dated 15 December 1974 that the present suit is proceeding. And after some delays at the request of the defendant, the court resumed hearing, when counsel for the defendant objected to the inclusion of the notes of enquiry before the PPT in the present proceedings before this court.

It is to be noted that the enquiry at the land office in Kangar, Perlis, was conducted by the Pegawai Penyelesaian Rancangan Tanah Perlis in accordance with the law, ie the Perlis Land Settlement Enactment 1966 and the Perlis Land Settlement Rules 1967 (Ps PU 5 of 1967), and that the conducting officer was a public servant conducting the enquiry in the discharge of his official duty and did so as enjoined by law.

Therefore the record of proceedings before the Pegawai Penyelesaian Rancangan Tanah Perlis is a public document of an enquiry into the dispute of the two parties at which both parties were ably represented by counsel, and is admissible under s 35 of the Evidence Act 1950. To strengthen the admissibility of this document, the same public servant who conducted the enquiry in the Land Office, Perlis and his assistant came to give evidence during the trial. And further more this record of proceedings formed part of the agreed bundle of documents.

The next witness for the plaintiff was Encik Abu Bakar bin Haji Ahmad (PW2) who at the time of the trial was an Ex Co member of the Perlis State Government. He was in 1973 a penghulu of the mukim where the land in dispute is situated. He made enquiries and attended the enquiry before the PPT. Then, a Chinese Affairs Officer, Perlis, one Mr Foo Hee Liang, was called and offered to the defendant, which was declined by the defendant. Then we have Encik Hanafi bin Hj Abu Bakar, who was the Pegawai Penyelesaian Rancangan Tanah Perlis in 1972 and 1973 and who conducted the PPT's enquiry in 1974 and produced the record of the enquiry. Next, the defendant re-called PW2 for further cross-examination.

The plaintiff Yong Yin Siew (PW4) then gave evidence. He testified that his father was Yong Peng Koi, who was a cousin brother of Yong On, and Yong Peng Koi and Yong On were children of the same blood brothers. The grandfather was Yong Hwa. Yong Hwa's brother was Yong Koi, who was the father of Yong On.

The plaintiff in his evidence said that Yong On died about 50 years ago when Yong On was about 20 years plus and he died as a bachelor, ie Yong On died without leaving any issue at all.

Then, after some adjournments, the defendant again recalled Encik Abu Bakar bin Hj Ahmad (PW2) for further cross-examination. (Please see the great length of time and repeated questioning of the same points by counsel for the defendant going over the same grounds many times.)

At last the turn of the defendant came. Chong Sheak Thow, the defendant, said on oath that Yong On was his father. And at the time of his father's death, he was not born yet. When his father Yong On died, his mother re-married Chong Peck Koi while his mother was six months pregnant. The defendant was in his mother's womb at the time his mother re-married Chong Peck Koi. At the time of Yong On's death, he already had two children, the eldest a daughter and the other a son, so that the defendant had an elder sister and an elder brother, both surviving Yong On. The defendant's elder sister's name is Chong Choon Lan and his elder brother's name is Chong Kee Yew.

It is to be noted here, that before the defendant's mother re-married Chong Peck Koi, the defendant's

elder sister and elder brother (both of them, the defendant said, were the children of Yong On) were having the surname of 'Chong'.

The defendant now has five children and all of them have the surname 'Chong'. His mother had three children after she remarried Chong Peck Koi, and they of course have the surname 'Chong'.

Under cross-examination, the defendant denied informing the PPT when he applied for the distribution order that he, his elder sister and brother (children born before his mother's re-marriage) and the three children from the re-marriage had claimed that all six of them were children of Yong. On The defendant said only three of them applied (see p 6 of the notes of enquiry – agreed bundle of documents).

The issues in this case are purely questions of fact whether Yong On died without leaving any issue or Yong On died leaving a son named Chong Peck Koi (the defendant's father), or Yong On died leaving three children, namely, the defendant and his elder sister and elder brother.

We have the expert on Chinese customs and traditions who said in no uncertain terms that a Chinese will never change his surname or 'seh'. If he does, he will be treated as an outcast from his family. He will never dishonour his family 'seh' by changing it to another 'seh'. The 'seh' is sacred to a Chinese family.

The plaintiff (PW4) has testified in a clear and straightforward manner and the court finds nothing at all to doubt his evidence. The plaintiff testified that after the death of Yong On, his grandfather Yong Hwa took possession of the land and later rented it out to Chong Peck Koi, the defendant's father.

On the other hand, we have the evidence of the defendant who sometimes was evasive. From the very first word on examination-in-chief, after describing himself that he was 54 years old, where he was residing and that he was a tractor driver, the defendant said:

> Yong On was the registered owner of the land in question. Yong On was my father. He has passed away.
>
> When Yong On passed away, were you born yet?
> A: When my father died, I was not born yet. I was born after his death.

After giving his mother's name, the defendant said that after the death of his father Yong On, his mother remarried Chong Peck Koi. And before re-marrying Chong Peck Koi, his mother had two older children by Yong On, by the names of Chong Choon Lan, a female, and Chong Kee Yew, a male.

It is strange that the elder sister and brother of the defendant born before their father Yong On died carry the surname of 'Chong'.

It is noteworthy to refer to the defendant's evidence that when his mother re-married Chong Peck Koi, defendant was 'nearly about to be born'. This is fantastic. His mother was carrying the defendant in her womb and it must have been about eight or nine months pregnancy. Even a blind man could feel that advanced state of pregnancy, let alone the difficulty to consummate. The defendant had been brought up by Chong Peck Koi, the defendant's stepfather, and hence the defendant had to carry the surname of 'Chong', which he told the PPT at the land office enquiry. In fact he told the PPT that Yong On was his grandfather.

There is a clear wanton lack of truthfulness in the defendant's evidence read in the light of what he had claimed before the PPT. And to tell the court that his elder sister and elder brother were born before Yong On died but carried the surname of 'Chong' beats one's sense of propriety and honesty.

The defendant had produced receipts for payment of quit rent in respect of the land in question. The fact of who pays the quit rents for the land does not point to who is the real owner of the land. Any one can go and pay the rents, as is usually done by those in occupation either by way of lease, or rent or by sheer squatting.

From all the voluminous evidence, both oral and documentary, it is a finding of fact that Yong On died leaving no issue and that the defendant is not the son of Yong On and neither does the defendant belong to the 'Yong' family. The defendant is in no way related at all to the deceased Yong On and it follows that he is in no way entitled to the estate of Yong On. It is also a finding of fact that the plaintiff is the rightful beneficiary of the estate of Yong On. Judgment for the plaintiff as prayed, with costs.

By way of passing, this court has found it to be very distasteful the way and method of unnecessarily prolonging the proceedings, of the many postponements and the many unfair questioning of witnesses who were recalled for further and still further cross-examinations in the name of justice. There were also unwarranted objections raised even after agreeing on the documents. Every trick in the trade was utilized to delay, to procrastinate and to stifle the truth. It is hoped that the Supreme Court, if the appeal by the defendant is dismissed, will impose some punitive terms on the defendant and his cohorts who abetted him for such a contumelious and despiteful conduct in the proceedings in delaying and suppressing the truth.

Judgment for the plaintiff.

Solicitors: *Mayandi & Panjaram; Tan Beng Hong & Co.*

Reported by *Al-Mansor Adabi*